

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

Alicia G. Farrington,

Chapter 7 Case

Debtor.

Bky. No. 03-41357

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NOTICE OF HEARING AND MOTION TO DISMISS UNDER 11 U.S.C. §707(a)

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TO: The Julia Christians, interim trustee, U.S. Trustee and other entities specified in Local Rule 9013-3.

1. The Debtor, by her undersigned attorney, moves the court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on November 3, 2004 at 10:30 a.m., in Courtroom 8 West, at the United States Bankruptcy Court, United States Courthouse, 300 S. 4<sup>th</sup> St., Minneapolis, MN.
3. Any response to this motion must be filed and delivered not later than October 31, 2004 which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than October 27, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. The Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, FED.R.BANKR.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on 2/25/03 as a Chapter 13 case and was subsequently converted to that of Chapter 7 on 8/16/04. The case is now pending in this Court.
5. This motion arises under 11 U.S.C. 707(a) and 11 U.S.C. 727(a)(8). This motion is filed under FED.R.BANKR.P. 9014 and Local Rules 9013 -1 to 9013-5. Debtor/movant requests that this case be dismissed.
6. The debtor requests that the court dismiss this case for the following reason(s):

- a) The debtor had previously filed a Chapter 7 case on April 13, 1998. That case was assigned case number 98-42439. The debtor was granted a discharge in that case on July 22, 1998.
  - b) The instant case, which was initially filed as a Chapter 13 case was filed on February 25, 2003 as case number 03-41357, and was subsequently converted to that of Chapter 7 on August 18, 2004.
  - c) 11 U.S.C. 727(a)(8) provides "that the court shall grant the debtor a discharge unless the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition."
  - d) Debtor's counsel had miscalculated and believed the date of the conversion to that of Chapter 7 as the applicable date for determining the debtor's eligibility for discharge. The proper date to consider was the date of filing of the intervening Chapter 13 case.
  - e) Based on the date of filing for debtor's previous Chapter 7 case (April 13, 1998) and the filing date of the converted Chapter 13 case (February 25, 2003), the debtor is not eligible for a discharge as the six year statutory prohibition to the granting of another discharge in Chapter 7 had not been met.
7. 11 U.S.C. §707(a) subparagraphs 1-3 provide that the court may dismiss a case under this chapter only after notice and a hearing and only for cause, and goes on to list a number of justifiable reasons on which a basis for dismissal may rest. The reasons mentioned there are not exclusive. The Court has the authority to order a dismissal of the case based on the ineligibility of the debtor to receive a discharge. This is a no asset case, and therefore, there would be no prejudice to creditors in dismissing this case.

WHEREFORE, the debtor respectfully requests that this chapter 7 case be dismissed.

Dated: October 2, 2004

Respectfully submitted,

By: /s/ David D. Kingsbury  
David D. Kingsbury, #211060  
Attorney for Debtor  
14827 Energy Way  
Apple Valley, MN 55124  
(952) 432-4388

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Alicia G. Farrington.

Chapter 7

Debtor(s).

Bky. No. 03-41357

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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The Debtor submits this memorandum in support of her motion to dismiss this case under 11 U.S.C. §707 (a). See Local Rule 9013-2(a).

**Analysis**

1. A motion to dismiss is governed by Section 707 of the United States Bankruptcy Code which provides in part;

The court may dismiss a case under this chapter only after notice and a hearing and only for cause,

2. 11 U.S.C. 727(a)(8) provides that the court shall grant the debtor a discharge unless the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;
3. In this case the debtor is not eligible for a discharge. Her most recent case, a Chapter 13 which was converted to a Chapter 7 does not meet the criteria for discharge under 11 U.S.C. 727(a)(8).
4. The debtor had filed a previous Chapter 7 case on July 22, 1998. Her Chapter 13 case, subsequently converted to Chapter 7, was filed on February 25, 2003. The time between the two filings is short of the six year period required for her to be eligible for a discharge in the converted Chapter 7 case which is pending before the Court.

WHEREFORE, the debtor submits this memorandum in support of her motion to dismiss the above-captioned case.

Dated: October 2, 2004

Respectfully submitted

By: /s/ David D. Kingsbury  
David D. Kingsbury, #211060  
Attorney for Debtor  
14827 Energy Way  
Apple Valley, MN 55124  
(952) 432-4388

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re: Alicia G. Farrington,

Debtor(s)

**UNSWORN DECLARATION OF  
PROOF OF SERVICE**

Case No. BKY 03-41357

I, David D. Kingsbury, of the law firm of Kingsbury & Associates, Attorneys licensed to practice law in this Court, with its office address of 14827 Energy Way, Apple Valley, MN 55124 declare that on 10/5, 2004 I served the annexed Notice of Hearing and Motion to Dismiss Under 11 U.S.C. § 797(a) upon each of the entities named below either personally, by facsimile or by mailing to each of them a copy thereof by enclosing same in envelope with first class postage prepaid and depositing same in the post office at Apple Valley, MN, addressed to each of them as follows:

**Copy to United States Trustee:**

United States Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Mpls, MN 55415

**Copy to Trustee:**

Julia Christians, Esq.  
120 South 6<sup>th</sup> St., Ste 2500  
Minneapolis, MN 55402

**Copies to all creditors listed on attached matrix**

and I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: Oct 5, 2004

/s/ David D. Kingsbury

\_\_\_\_\_  
David D. Kingsbury

ALLIED INTERSTATE  
P.O. BOX 361774  
COLUMBUS OH 43236

AMOCO  
P.O. BOX 9014  
DES MOINES IA 50368-9014

ANESTHESIOLOGY  
C/O PHOENIX MANAGEMENT  
PO BOX 3972  
MINNEAPOLIS MN 55403

BANK OF NEW YORK  
C/O AMERICAN EDUCATION SERVICE  
P.O. BOX 8147  
HARRISBURG PA 17105-8147

BLAIR  
CREDIT SERVICES  
307 LIBERTY STREET  
WARREN PA 16366-1000

BOOK OF THE MONTH CLUB  
C/O NORTH SHORE AGENCY  
751 SUMMA AVE  
WESTBURY NY 11590

CAPITAL ONE  
BOX 60000  
SEATTLE WA 98190-6000

COLLTECH INC.  
P.O. BOX 44430  
EDEN PRAIRIE MN 55344

COLUMBIA HOUSE  
C/O NCO FINANCIAL SYSTEMS INC.  
P.O. BOX 41417  
PHILADELPHIA PA 19101

CONNEXUS ENERGY  
C/O PHOENIX MANAGEMENT  
P.O. BOX 3972  
MINNEAPOLIS MN 55403

CROSSING POINT  
220 HICKORY STREET  
WARREN PA 16368

DIRECT MERCHANTS BANK  
P.O. BOX 29438  
PHOENIX AZ 85038

DYMACOL INCORPORATED  
3070 LAWSON BLVD.  
P.O. BOX 9017  
OCEANSIDE NY 11572

FIRST NATIONAL BANK OF MARIN  
P.O. BOX 98873  
LAS VEGAS NV 89193

FIRST PREMIER BANK  
P.O. BOX 5147  
SIOUX FALLS SD 57117

GINNY'S INC.  
1112 - 7TH AVE.  
MONROE WI 53566

HONEY BEAR DAYCARE  
1270 S. ABILENE ST.  
AURORA CO 80013

HOUSEHOLD BANK/BANKCARD SERV.  
P.O. BOX 5222  
CAROL STREAM IL 60197-5222

MIDNIGHT VELVET  
1112 - 7TH AVE.  
MONROE WI 53566

MINNESOTA DEPT OF REVENUE  
551 BKY SECTION CEU DEPT  
PO BOX 64447  
ST PAUL MN 55164

MONROE & MAIN  
1112 - 7TH AVE.  
MONROE WI 53566

NORTH MEMORIAL  
3300 OAKDALE AVE N  
ROBBINSDALE MN 55422

NORTH MEMORIAL HEALTH CARE  
P.O. BOX 1477  
MINNEAPOLIS MN 55440

NORTH MEMORIAL HOSPITAL  
3300 OAKDALE AVE. N.  
ROBBINSDALE MN 55422

NORTH PATHOLOGY ASSOC.  
C/O ASSET RESOURCES  
2989 BROOKDALE DR.  
BROOKLYN PARK MN 55444

OAKDALE OBSTETRICS & GYN  
8559 EDINBROOK PKWY #106  
BROOKLYN PARK MN 55443-3728

PENNCRO ASSOCIATES LTD  
95 JAMES WAY, SUITE 113  
SOUTHAMPTON PA 18966-3847

PROVIDIAN  
P.O. BOX 9539  
MANCHESTER NH 03108

PROVIDIAN  
C/O PENNCRO ASSOCIATES INC.  
95 JAMES WAY #113  
SOUTHAMPTON PA 18966-3847

SEVENTH AVENUE  
1112 7TH AVENUE  
MONROE WI 53566

WELLS FARGO  
PO BOX B514  
MINNEAPOLIS MN 55479

WELLS FARGO MORTGAGE  
CORRESPONDENCE X2501-01T  
P.O. BOX 10335  
DES MOINES IA 50306-0335

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Alicia G. Farrington.

Chapter 7

Debtor(s).

Bky. No. 03-41357

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ORDER

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At Minneapolis, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004,  
the debtor's Motion to Dismiss under 11 U.S.C. § 707(a) came before the Court for  
hearing. Appearances were noted in the record.

The court made its findings of fact and conclusions of law on the record pursuant  
to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

IT IS HEREBY ORDERED:

That the Chapter 7 bankruptcy case filed by the above-captioned debtor is  
dismissed pursuant to 11 U.S.C. § 707(a).

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The Honorable Robert J. Kressel  
United States Bankruptcy Judge